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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 3740 of 2007
Date of decision: 22.11.2007

Pardeep Kumar and another **...Appellants**

Versus

Smt. Krishna Kumari and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. N.D.Achint, Advocate for the appellants.

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RAJESH BINDAL, J.

The plaintiffs having lost in both the Courts below is before this Court in second appeal.

The claim made in the suit filed by the appellants/plaintiffs was for specific performance of contract. It is alleged that contract was entered into by the respondents on August 13, 1996 for sale of residential house No. EP-203/14 measuring 105 sq. yards situated in Jacubpura, Gurgaon, which was owned by respondents/defendants. The total sale consideration was settled at Rs. 11,50,000/- out of which Rs. 1,50,000/- was stated to have been paid as earnest money. It was further alleged in the suit that respondents/defendants were to obtain income tax clearance certificate upto November 30, 1996 and in case of failure, the last date of registration of sale deed was November 30, 1997. Inspite of the fact that appellants/plaintiffs were present before Sub Registrar, Gurgaon on November 29, 1996 and December 2, 1996 (November 30, and December 1, 1996 being holidays), the respondents/defendants did not come present for getting the sale deed registered.

The appellants/plaintiffs had initially filed suit for injunction but later the same was amended and relief for specific performance was also prayed for. The execution of the agreement and receipt and earnest money is not disputed by the respondents/defendants. However, it was submitted that fraudulently the appellants/plaintiffs have entered additional line in

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clause 6 of the agreement to the effect that "Tatha Agar Ander Mayad Bayan Ayakar Parman Patra Prapt Na Kar Sake to Mayad 30.11.97 Hogi". It is stated that the above line was added in the agreement without notice and consent of the respondents/defendants. The allegations of the appellants that they had appeared before the Sub Registrar as alleged were denied.

On appreciation of the evidence led by the parties, learned trial Court found that the allegations of the respondents/defendants regarding tampering with agreement by insertion of additional line in clause 6 thereof were proved as it was found that there was difference between the last line of clause 6 when compared with rest of the writing, ink and spacing and alignment was also different. Still further the photo copy of the agreement to sell, which was produced by respondents/defendants as Ex. D1, did not contain any such line. Once it was found by the trial court that the appellants/plaintiffs had not approached the Court with clean hands and had tampered with the agreement to sell, the discretionary relief of specific performance was not granted and the suit was dismissed and in Ist Appeal, the judgment and decree of the trial Court was upheld.

Before this Court, learned counsel for the appellants submitted that clause of the agreement for alleged tampering of which the appellants have been non suited was not material especially keeping in view the fact that the execution of the agreement to sell was not initially denied by the respondents/defendants and the same was not material clause and as such relief prayed for should not have been denied to the appellants. Still further argument is that even if the suit for specific performance fails still the earnest money of Rs. 1,50,000/- paid by the appellants/plaintiffs deserves to be refunded. However, I do not find merit in any of the contentions raised by learned counsel for the appellants/plaintiffs. Once the appellants had not approached the Court with clean hands and had sought to rely upon a document, tampering in which was clearly proved they were rightly held to be not entitled to discretionary relief of specific performance of the agreement. As far as relief in alternative claimed by the appellants is concerned, there is no prayer in the suit filed by the appellants claiming the

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same relief. Learned counsel for the appellants sought to rely upon general prayer made in the end to the effect that any other relief which the Hon'ble Court deem fit and proper be granted. The submission that this part of the prayer clause was sufficient enough for granting the alternative relief to the appellants is also found to be meritless for the simple reason that there being no specific prayer for that and the courts below have rightly refused to exercise the discretion in favour of the appellants seeing their conduct.

Accordingly, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

November 22, 2007 **(Rajesh Bindal)**
Pka **Judge**